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June 6, 1996

Ex Parte

Mr. William F. Caton
Acting Secretary
1919 M Street N.W., Room 222
Federal Communications Commission
Washington, D.C. 20554

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JUN 6 1996

Federal Communications Commission
Office of Secretary

Re: CC Docket No. 94-1

Dear Mr. Caton:

Today, Rich Sbaratta, Bill Norton and the undersigned, all representing BellSouth, met with Jim Schlichting, Jane Jackson, Dan Abeyta, Doug Slotten, Steve Spaeth, Greg Cooke, and Aaron Goldschmidt of the Common Carrier Bureau and Jeff Lanning from the Office of the General Counsel to discuss the interrelationship of access reform and price caps to the provisions of the Telecommunications Act of 1996. The attached material was discussed during this meeting.

Please call me if you have any questions.

Very truly yours,



W W (Whit) Jordan
Executive Director - Federal Regulatory

Attachment

cc: Jim Schlichting
Jane Jackson
Dan Abeyta
Doug Slotten
Steve Spaeth
Greg Cooke
Aaron Goldschmidt
Jeff Lanning

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BELLSOUTH VIEW OF INTERRELATIONSHIPS

PRICE FLEX (2nd FN), STREAMLINED TARIFF PROCEDURES, ACCESS REFORM, AND FORBEARANCE

<u>Old Paradigm</u>	<u>Impetus For Change</u>	<u>New Paradigm</u>
Price Flex Docket (CC 94-1, 2nd FN)		
-Baseline Issues	Telecom Act: Sect 204-Streamlined Tariffs	Streamlined Tariffs Defined: -7/15 Day Notice, No Cost Support -Elimination of Rate Structure Constraint Contract Carriage Permitted Action Required: -Preferred- Act on Baseline Issues -2nd Choice-New Expedited Proceeding
-Streamlined / Non Dominant Regulation	Telecom Act: Section 10-Forbearance	Forbearance: -Act Establishes Criteria -LEC Files Petition That Is Effective In 12 Months Unless FCC Denies -Petitions Based On Market Conditions For Geography/Service With Specific Relief Requested -No Further Action Required on 2nd Further Notice (Streamlined/ Non Dominant Regulation)
Access Reform Issues -Rate Structure -Pricing -Assistance/ Contribution -Carrier Common Line	Telecom Act: Sect. 204-Streamlined Tariffs Section 10-Forbearance Section 254-Universal Service “ “	Access Reform Residual Issues: -ESP Exemption -Cost Allocation Rules

Streamlined Tariff Procedures

The Telecommunications Act of 1996 states:

Sec 402 (b) (1)

“A local exchange carrier may file with the Commission a new or revised charge, classification, regulation or practice on a streamlined basis. Any such charge, classification, regulation or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed...”

Sec 402 (b) (4)

“...this subsection shall apply with respect to any charge, classification, regulation, or practice filed on or after one year after the date of enactment of this Act.”

A clear intent of this language is to streamline the current tariff filing process. This applies not only to revised charges, which impacts the speed of price changes, but also the introduction of new services. As the Commission defined in the AT&T streamlining proceedings, and as proposed by BellSouth and USTA in CC 94-1, a streamlined tariff filing process would necessarily address the following:

-Rate Structure

Since the Act states that a LEC may file “a new or revised charge...” on a streamlined basis, an existing Part 69 rate structure that must be complied with is inconsistent with the Act and should be eliminated.

-Notice and cost support.

Maximum notice periods are specifically outlined in Section 204 of the Act. Cost support would not be required (fn to CC 90-132, order dated Sept 16, 1991, Para 74), or if required, limited to aggregated direct costs (as proposed by BellSouth in CC 94-1 Comments Dec 1995)

-Contract Carriage

A contract would be considered a “new or revised charge” and must be permitted. This would also comport with Commission action in CC 90-132, order dated Sept 16, 1991 (Para 102), and as proposed by USTA in 94-1 (Baseline) comments.

Part 69 Rate Structure and Waivers

The new language returns LECs to carrier-initiated rates, a process by which common carriers file with the Commission rates and rate structures for the services they propose to offer. Only if such filings raise questions of lawfulness, should the Commission investigate such filings. Since the current Part 69 waiver process would be inconsistent with the Act, it is eliminated as of February 8, 1997. Indeed, since the current switched access rate structure would limit new or revised rates, and is therefore also inconsistent with the Act, it should either be eliminated or language must be added to the rules to permit any such new or revised services to be introduced without regard to the existing structure.

The Commission must take into account the additional new entrants into the exchange and exchange access business as a result of the Act. Retention of the rate structure, since it may apply only to incumbent LECs, only further aggravates the lack of regulatory parity in a competitive environment. Additionally, the Commission may have justified its intervention in the LEC's provision of switched access services in order to control interexchange competition and to assure that AT&T did not obtain any advantage because of its size and dominance of that market. Having found that AT&T is not dominant, there is no basis upon which to continue to constrain the LECs rate structures. However, BellSouth would be willing to continue the switched access rate structure on an interim basis, provided that language allowing any new or revised service is added to the rules.

Deemed Lawful/Presumed Lawful

Significantly, the Act states that such revisions and new charges are to be "deemed lawful...unless the Commission takes action under paragraph (1) ..."(suspend/investigate). The current approach on tariffs that are presumed (prima facie) lawful in Part 1.773 requires that the tariff will not be suspended by the Commission unless a petitioner shows:

- A high probability that the tariff would be found unlawful
- Harm to competition not outweighed by unavailability of the service
- Irreparable injury
- A suspension is not contrary to the public interest

This now applies to all filings included under the language of this section of the Act (any new or revised charge, classification, regulation, or practice)

Relationship to 94-1 2nd Further Notice

The Price Flex docket (Baseline) addresses from a more comprehensive standpoint the need to revise the current Part 61 and Part 69 rules in order to:

- Speed the deployment of new services
- Reduce notice and cost support administrative burdens
- Permit more efficient pricing, to the benefit of consumers

The issues that are addressed in 94-1, such as notice and cost support, Part 69 Waivers, etc. are the very issues that need to be implemented as a result of Section 402 b of the Act.

While the Price Flex docket is aimed primarily at rules constraining the Price Cap companies, all parties had opportunity to comment on the Baseline Issues (e.g. USTA representing all member companies, including NECA, Cincinnati Bell Reply Comments), and this docket had issues such as Part 69 waivers that were not limited to Price Cap carriers. This record can be used to address the legislative mandate.

The Commission should act now on the Baseline portion of the Price Flex docket, relying on both the record in that docket and the legislative mandate for change, rather than issuing an additional NPRM for streamlined tariff procedures. If the Commission sees a need to issue the additional NPRM, action now in the Price Flex docket would merely set the stage for that NPRM while delivering the benefits of immediately streamlining the regulatory process as envisioned by Congress.

Regulatory Forbearance

- The Telecommunications Act has established the criteria for regulatory flexibility with its new Section 10 deregulatory language for Forbearance. The Act simply states that any carrier may file a petition, which will be deemed granted if not acted on by the Commission within one year.
- Under the provisions of the Act, LECs can file petitions for forbearance which requires the FCC to forbear from enforcing any provision of the 1934 Act or any of its regulations against a telecommunications carrier or service in any or some of its geographic markets, if it determines that enforcement is not necessary to (1) ensure that charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory; (2) protect consumers; (3) protect the public interest.
- In making a determination for forbearance, the FCC shall consider whether forbearance will promote competitive market conditions and enhance competition among providers. Such a determination may be the basis for a finding that forbearance is in the public interest.
- The only limitations that are placed on the FCC's forbearance authority under Section 10 state that the agency may not forbear from applying the interconnection requirements of Section 251 (c) until it has determined that these requirements have been fully implemented, and the requirements for BOC entry into the long distance market contained in Section 271 may not be dropped until the agency finds that they have been fulfilled. In view of the language relative to the limitations for forbearance it is clear that the Act intended the use of forbearance petitions to be far reaching and in time to incorporate interconnection and interLATA relief.
- Forbearance allows the opportunity to evaluate and grant regulatory relief for specific markets and specific regulations, it is not a "one size fits all" approach.
- There is no longer a need to continue action on the second half of the 94-1 Second Further Notice, which was to address the old concepts of streamlined/non-dominance regulation. These issues have been effectively made moot by the Act's provisions for Forbearance.

Access Charge Reform

- In August of 1993, the Common Carrier Bureau released it's staff working paper on a perspective for the need for Access Charge Reform. The paper identified the need for a proceeding to address the following issues:

- Rate Structure Issues
- Pricing Issues
- Assistance/contribution Issues
- Carrier Common Line Issues

- The Telecommunications Act of 1996 has established the mechanics for addressing the majority of those issues as follows:

-Rate Structure Issues	Section 402 b Streamlined Filings
-Pricing Issues	Section 401 Forbearance
-Assistance/contribution Issues	Section 254 Universal Service
-Carrier Common Line Issues	Section 254 Universal Service

- Therefore, the FCC does not need to address these issues in a separate Access Charge Reform proceeding.

- Residual issues, such as cost allocation rules, that are not resolved by Commission action in response to the Act, can be dealt with on a more routine basis. If the resolution of the Streamlined Tariff Filings issues raised in Section 402 are not fully addressed by eliminating the current switched access rate structure, but by inserting language into the rules to permit any new or revised charge, classification, etc., then the Commission may need to deal with the final elimination of the rate structure rules in an Access Charge Reform proceeding in the future.